STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 19, 2005
v	No. 251608 Wayne Circuit Court
RONALD ROLAND, Defendant-Appellant.	LC No. 03-003842

Before: Zahra, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, attempted possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), and attempted possession of marijuana, MCL 333.7403(2)(d). We affirm.

Defendant argues that the trial court's "attempted possession" guilty verdicts on the drug charges must be set aside because the evidence proved completed offenses thus they were the product of impermissible "waiver breaks." After reviewing the trial court's findings for clear error and the "waiver break" issue de novo as a question of law, we disagree. See *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999).

In *People v Jones*, 443 Mich 88; 504 NW2d 158 (1993), our Supreme Court considered whether a defendant could be convicted of attempted felonious assault, although the findings of fact rendered by the trial court following the bench trial supported conviction of the completed offense. *Id*. at 89-90. The Court held that the long-established rule in Michigan is to permit conviction of an attempt even when the evidence shows a completed crime. *Id*. at 103. Here, the findings of fact indicated that defendant could have been convicted of both possession of controlled substance offenses but, under the holding in *Jones*, *supra*, the attempt convictions were permissible. Thus, defendant's "waiver break" allegations are without merit and, in any event, inconsistent verdicts were not rendered. See *People v Ellis*, 468 Mich 25, 28; 658 NW2d 142 (2003). For this same reason we reject defendant's claim that the attempt verdicts were not supported by the findings of fact and were against the great weight of the evidence.

Defendant also argues that the trial court abused its discretion when it did not allow him to present character evidence and evidence of a possessory interest in the property. We disagree. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Washington*, 468 Mich 667, 670; 664 NW2d 203 (2003).

To establish a violation of MCL 333.7403, the prosecutor must prove that the defendant had dominion or right of control over the substance with knowledge of its presence and character. MCL 333.7403(2); *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). Defendant contends that he was denied the opportunity to present evidence of an essential element of his defense, admissible under MRE 405(b), when the trial court sustained the prosecution's objection to character witness testimony regarding his non-drug use. But, whether defendant intended to use, sell, or otherwise dispose of the drugs is irrelevant to the possession charges arising on the occasion of his arrest. See *People v Harper*, 365 Mich 494, 507-508; 113 NW2d 808 (1962). Thus, the evidence was inadmissible and the trial court did not abuse its discretion in sustaining the prosecution's objection. See MRE 402.

Defendant also contends that he was entitled to present evidence that the place of business exception applied to the concealed weapons charge. See MCL 750.227. But, it was undisputed that defendant was not at his place of business; he was hired by the owner of the property to clean the lot and the building. He had no possessory interest in the land, thus, the trial court did not abuse its discretion in permitting such "evidence." See *People v Clark*, 21 Mich App 712, 716; 176 NW2d 427 (1970).

Finally, defendant argues that the trial court erred when it denied his motion to suppress the handgun because police officers had no lawful reason to search him without a warrant. We disagree.

Under *Terry v Ohio*, 392 US 1, 21-22, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968) and its progeny, the police may conduct an investigatory stop where they have a reasonably articulable suspicion that a crime is afoot or has been committed. The reasonableness of an officer's suspicion is determined on a case-by-case basis considering the totality of all the facts and circumstances. *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001). Here, the officers responded to a reported breaking and entering in this admittedly high crime area and, when they arrived at the property, they observed defendant and his brother exiting the building. They also observed defendant carrying a large pair of bolt cutters and a hammer. The officers asked defendant to place the items on the ground. One of the officers then performed a pat-down search of defendant for safety purposes and found a loaded handgun in his waistband. See *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996). We conclude that the trial court's holding that the search was lawful in light of the facts was not clearly erroneous. See *People v Hickman*, 470 Mich 602, 605-606; 684 NW2d 267 (2004).

Affirmed.

/s/ Brian K. Zahra
/s/ William B. Murphy
/s/ Mark J. Cavanagh